



CITY OF EDMONDS

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HEARING EXAMINER

MIKE COOPER
MAYOR

In the Matter of the Application of)	NO. PLN20100027
)	
Michael Gold)	FINDINGS, CONCLUSIONS,
)	AND DECISION
)	
For a Shoreline Substantial Development)	
Permit.)	

SUMMARY OF DECISION

The request for a shoreline substantial development permit to construct two residences within the Puget Sound shoreline is **GRANTED**, subject to conditions.

SUMMARY OF RECORD

Request:

Mike Gold (Applicant) requested a shoreline substantial development permit (SSDP) to construct single-family residences at 7510 162nd Street SW and 16200 75th Place West in Edmonds, Washington.

Hearing Date:

The City of Edmonds Hearing Examiner conducted an open record hearing on the request on October 21, 2010.

Testimony:

At the open record hearing, the following individuals presented testimony under oath:

1. Kernen Lien, Associate Planner, City of Edmonds
2. Robert Hughes, Reed & Associates, Applicant Representative
3. Michael Gold, Applicant

Exhibits:

At the open record hearing the following exhibits were admitted into the record:

1. Staff Report, with the following attachments:
 1. Land Use Application Form
 2. North Residence Site Plan
 3. North Residence Grading Quantities
 4. North Residence Grading and Temporary Sediment Control Plan
 5. North Residence Revegetation Plan
 6. South Residence Site Plan
 7. South Residence Grading Quantities
 8. South Residence Grading and Temporary Sediment Control Plan
 9. South Residence Revegetation Plan
 10. Zoning and Vicinity Map

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11. Plate #5 Shoreline Jurisdiction Map from Edmonds Shoreline Master Program
12. SEPA Checklist for North Residence
13. SEPA Checklist for South Residence
14. SEPA MDNS
15. Notice of Application
16. Notice of Application Declaration of Posting and Mailing
17. Notice of Application Affidavits of Publication
18. Notice of Public Hearing
19. Notice of Public Hearing Declaration of Posting and Mailing
20. Technical Review Committee Comments
21. Critical Area CRA20100032
22. Nelson Geotechnical Report dated 02-12-2010
23. Nelson Geotechnical Report dated 04-21-2010
24. Nelson Geotechnical Report dated 05-04-2010
25. Nelson Geotechnical Report dated 07-23-2010
26. Nelson Geotechnical Report dated 08-25-2010
27. Landau Peer Review North Residence 06-18-2010
28. Landau Peer Review North Residence 08-27-2010
29. Landau Peer Review South Residence 06-18-2010
30. Landau Peer Review South Residence 09-20-2010
31. Lot Line Adjustment PLN20100043

Upon consideration of the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following Findings and Conclusions:

FINDINGS

1. The Applicant requested an SSDP to construct single-family residences (two total) at 7510 162nd Street SW and 16200 75th Place West in Edmonds, Washington. *Exhibit 1, Attachment 1.*
2. The lot located at 7510 162nd Street SW (hereafter, “north lot”) is 19,275 square feet in area. The lot located at 16200 75th Place West (hereafter, “south lot”), which is immediately adjacent to the north lot, is 20,772 square feet in area. *Exhibit 1, Attachments 2 and 6.* Although the north lot is slightly less than the 20,000-square-foot minimum lot area of the RS-20 zone, it qualifies as a legal building site pursuant to ECDC 17.40.030(D). *Exhibit 1, page 4; Testimony of Mr. Lien.*
3. The north lot is currently undeveloped. The south lot is developed with a single-family residence, which will be removed. *Exhibit 1, Attachments 2 and 6.*
4. The subject parcels and the parcels to the north, south, and east are zoned single-family residential, minimum lot area of 20,000 square feet (RS-20). The Burlington Northern Railroad right-of-way is located to the west of the subject property, and to the west of the railroad right-of-way is Puget Sound and the Meadowdale Marina. *Exhibit 1, Attachments 2 and 10; Exhibit 1, page 3.*
5. The proposed residences would comply with the setback, height, and lot coverage restrictions of the RS-20 zone. For the north lot, the coverage would be 19 percent; and for the south lot, the coverage would be 26 percent. *Exhibit 1, page 4; Exhibit 1, Attachments 2 and 6.*

6. The western portion of the subject parcels, including much of the project area, is within 200 feet of the Puget Sound shoreline and is therefore subject to the requirements of the Washington State Shoreline Management Act and the City of Edmonds Shoreline Master Program. An SSDP is required for “substantial” development (i.e., development exceeding a certain cost threshold) within the shoreline jurisdiction. Although single-family residences are normally exempt from the SSDP requirement, the exemption only applies when the grading required for the residence does not exceed 250 cubic yards. *WAC 173-27-040(2)(g)*. An SSDP is required for the proposed residences because the grading required for each residence would exceed 250 yards. For the north residence, cuts of 411 cubic yards and fills of 587 cubic yards would occur within 200 feet of the shoreline. For the south residence, cuts of 648 cubic yards and fills of 542 cubic yards would occur within 200 feet of the shoreline. When including the portions of the parcels located outside of shoreline jurisdiction, the cuts and fills required for each residence would exceed 1,000 cubic yards. *Exhibit 1, Attachments 3, 7, 12 and 13.*
7. The subject property is within a “Suburban Residential 1” shoreline designation. The development standards for single-family residences within the Suburban Residential 1 designation are the same as those specified for the RS-20 zone. *Exhibit 1, Attachment 11; Exhibit 1, pages 2 and 6.*
8. As described in more detail below, the subject parcels contain geologically hazardous areas (i.e., erosion and landslide hazards) that are regulated by the City’s critical areas ordinance. The Applicant has submitted the geotechnical reports and erosion control plans required by the critical areas ordinance, as well as post-construction revegetation plans. These documents have been peer-reviewed by a geotechnical consultant selected by the City. *Exhibit 1, Attachments 4, 5, 8, 9, and 21 – 30; ECDC 23.80.010.*
9. The subject parcels are located on a west-facing slope overlooking Puget Sound. The proposed residences would be constructed on a relatively level “bench” between steeper slopes. The slopes between the bench and the railroad right-of-way and between the bench and 75th Place West range from 18 to 50 percent, and average 36 percent. A small steeply sloped area adjacent to 75th Place West has an inclination of 100 percent. *Exhibit 1, Attachment 22.*
10. The site soils are classified as Alderwood-Everett gravelly sandy loam, 25 to 70 percent slopes. This soil unit is identified as having a high erosion hazard. However, the hazard is reduced where vegetation is not disturbed. *Exhibit 1, Attachment 22.*
11. The subject property is located within a designated Earth Subsidence and Landslide Hazard Area. A large-scale landslide occurred in the area of the subject property in 1947. *Exhibit A, Attachment 27.*
12. Based on the evaluation of the Applicant’s geotechnical engineer, the current probability of slope failure within a 25-year period is 30 percent. However, the project is expected to reduce the probability of slope failure, and the residences have been designed to resist landslides. *Exhibit 1, Attachments 25 and 26.* The project would improve the stability of the slope by controlling stormwater runoff, reducing slope inclinations at the toe of the upper slope, employing retaining walls to support portions of the slope, and adding vegetation. If the engineering recommendations are followed, the project should not increase the risk of damage to surrounding properties. *Exhibit 1, Attachment 23, pages 4 – 5; Exhibit 1, Attachment 24, pages 4 – 5; Exhibit 1, Attachments 25 and 26.*

13. As stated previously, the City had the Applicant's geotechnical reports peer-reviewed. The Applicant's geotechnical engineer was able to address the concerns raised during the peer review process, and the City is satisfied that the reports demonstrate compliance with the requirements of the critical areas ordinance. *Exhibit 1, Attachments 22 – 30; Exhibit 1, page 9.*
14. The City of Edmonds Master Program contains goals, policies, and regulations that are relevant to the proposal. Consistent with the goals and policies of the Shoreline Master Program, the project would not minimize the rights of others; the project would be consistent with the critical areas ordinance; the use would be consistent with the established development pattern in the surrounding area; the project would not degrade water quality or disrupt lands covered by water, in that the property is separated from the shoreline by the railroad right-of-way and erosion control measures would be implemented; and the use would be consistent with the Comprehensive Plan, which designates the subject property as Single-Family Resource. *Exhibit 1, pages 4-5.*
15. The project would be consistent with the Shoreline Master Program's regulations for environmentally critical areas, which require the hazards from or impacts to critical areas to be mitigated. The geotechnical reports contain engineering recommendations designed to improve the stability of the slope and to minimize the risk to residents. *Exhibit 1, page 5; Exhibit 1, Attachment 22.*
16. The project would be consistent with the Shoreline Master Program's regulations for detached dwelling units. Although the regulations allow storm drainage to be piped down to the drainage system within the railroad right-of-way, in this case such action is not necessary because the Applicant proposes to direct stormwater into the City drainage system located within the 162nd Street SW right-of-way. The lot size, yard, and height requirements for development within the shoreline jurisdiction are the same as those applicable to the RS-20 zone, and the project would comply with those requirements. *Exhibit 1, page 6.*
17. The project would be consistent with the Shoreline Master Programs's regulations for land surface modification. The land surface modification is necessary for an approved use of the property, which is single-family residential development. The land surface modification is the minimum necessary for the development. With the recommendations of the geotechnical engineer, the project would not have adverse impacts on surrounding properties or the shoreline. Disturbed areas would be revegetated to prevent erosion. Temporary erosion control plans have been developed for the project and would be implemented on site. Temporary stockpiling during construction would be located in the center of the parcels, approximately 150 feet from the shoreline. The stockpiles would be covered with visqueen within 24 hours. The fill material brought to the site would not contain pollutants. Licensed engineers designed the land surface modifications and would also supervise the work. Due to the location of the property within an Earth Subsidence and Landslide Hazard Area, development would be limited to the dry season. *Exhibit 1, pages 7-8; Exhibit 1, Attachments 4 and 8; Testimony of Mr. Hughes; Testimony of Mr. Lien.*
18. The City of Edmonds departments that reviewed the application, including the Engineering, Fire, Public Works, Parks, and Building Departments, did not have any comments on the SSDP. Most responders indicated that they would provide comments during building permit review. *Exhibit 1, Attachment 20.*

19. The City of Edmonds acted as lead agency for review of environmental impacts caused by the proposal. The City issued a Mitigated Determination of Nonsignificance (MDNS) on June 21, 2010. The MDNS contains one condition requiring the Applicant to implement all of the recommendations contained in the geotechnical reports prepared for the project. No comments or appeals were filed in response to the MDNS. *Exhibit 1, Attachment 14; Exhibit 1, page 2.*
20. Notice of the SSDP application was published in *The Herald* on June 21 and 28, 2010; mailed to properties within 300 feet of the site on June 21, 2010; and posted on site and at the civic center, library, and public safety buildings on June 21, 2010. *Exhibit 1, Attachments 15, 16, and 17.*
21. Notice of the open record hearing was published in *The Herald* on October 5, 2010; mailed to properties within 300 feet of the site on October 4, 2010; and posted on site and at the civic center, library, and public safety buildings on October 4, 2010. *Exhibit 1, Attachments 18 and 19; Exhibit 1, page 3.* There was no public comment on the application. *Exhibit 1, page 3.*

CONCLUSIONS

Jurisdiction:

The Hearing Examiner has jurisdiction to hear and decide applications for shoreline substantial development permits pursuant to ECDC 20.01.003 and 20.55.030.

Criteria for Review:

The criteria for review of an SSDP are set forth in Washington Administrative Code (WAC) 173-27-150. In order to approve the permit, the Hearing Examiner must find that the development is consistent with:

- A. The policies and procedures of the State of Washington Shoreline Management Act;
- B. The State of Washington shoreline regulations (WAC 173-27); and
- C. The City of Edmonds Shoreline Master Program.

The City of Edmonds Shoreline Master Program contains goals, policies, and regulations that are applicable to the proposed development. Pursuant to ECDC 23.10.040, the regulations are mandatory, whereas the goals and policies “are intended to form the policy for shoreline uses, developments, and activities, as the basis of the regulations ... and to assist the city in determining whether to grant, modify and grant, or deny each proposed use, development, or activity.” *ECDC 23.10.040.* The applicable goals and policies are set forth in ECDC 23.10.060. The applicable regulations are set forth in ECDC 23.10.130, 23.10.150, and 23.10.210. The applicable goals, policies, and regulations are printed in the Staff Report (Exhibit 1) but will not be reproduced in this document due to the significant length of the text.

Conclusions Based on Findings:

1. With conditions of approval, the application satisfies the criteria for approval of a shoreline substantial development permit.
 - a. The development would be consistent with the Shoreline Management Act (SMA). The policy of the SMA, as set forth in RCW 90.58.020, is to “provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses.” This policy “contemplates protecting against adverse effects to the public health,

the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.” *RCW 90.58.020*. The proposed development is a reasonable and appropriate use for the suburban shoreline. The project is separated from the shoreline by other uses and does not have potential to affect aquatic life as long as erosion control measures are implemented. The project includes features designed to protect and improve the stability of the slope, including retaining walls, stormwater improvements, and landscaping. *Findings 1, 4, 7, 12, and 17.*

- b. With conditions, the development would be consistent with WAC 173-27. The regulations of the Department of Ecology contained in WAC 173-27 address the procedures and permitting requirements applicable to the various types of shoreline permits. This development is being reviewed under the criteria for approval for shoreline substantial development permits set forth in WAC 173-27-150. Additional regulations applicable to shoreline substantial development are as follows:

WAC 173-27-140 Review criteria for all development.

- (1) No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.
- (2) No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

WAC 173-27-190 Permits for substantial development, conditional use, or variance.

- (1) Each permit for a substantial development, conditional use or variance, issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in *RCW 90.58.140(6)* and *WAC 173-27-130*, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in *RCW 90.58.140 (5)(a) and (b)*.

The requirement of WAC 173-27-140(1) is addressed through the SSDP review criteria. WAC 173-27-140(2) is satisfied because the proposed structures would not be taller than 35 feet above average grade (see Exhibit 1, Attachments 2 and 6). *Finding 5*. The requirement of WAC 173-27-190 is addressed by ECDC 20.55.060 (no construction until 30 days after decision). This limitation is incorporated into the conditions of approval.

- c. With conditions, the proposal would be consistent with the goals, policies and regulations of the City of Edmonds Shoreline Master Program. *Findings 6, 7, 14, 15, 16, and 17.*

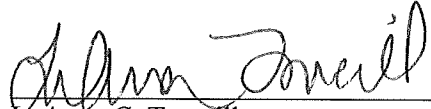
DECISION

Based on the preceding Findings and Conclusions, the request for a shoreline substantial development permit to construct two single-family residences within the Puget Sound shoreline, at 7510 162nd Street SW and 16200 75th Place West, is **GRANTED**, subject to the following conditions:

1. Pursuant to ECDC 20.55.060, "No construction authorized by an approved shoreline permit may begin until 30 days after the final city decision on the proposal."
2. The project must implement all recommendations in the geotechnical reports prepared in association with the projects.
3. The applicant is responsible for obtaining and following conditions of any applicable permits/approvals from local, state, and/or federal agencies.

DECIDED November 3rd 2010.

Toweill Rice Taylor LLC
City of Edmonds Hearing Examiners
By:


LeAnna C. Toweill

RECONSIDERATION AND APPEAL

The following is a summary of the deadlines and procedures for filing requests for reconsideration and appeals. Any person wishing to file or respond to a request for reconsideration or an appeal should consult the relevant ordinances and/or contact the Planning Division of the Development Services Department for further procedural information.

REQUEST FOR RECONSIDERATION

Section 20.06.010 of the Edmonds Community Development Code (ECDC) contains the procedures for requesting reconsideration of a Hearing Examiner decision. Requests for reconsideration must be filed with the City Planning Director within 10 calendar days of the Hearing Examiner's decision. The filing deadline is 4:30 p.m. on the last business day of the reconsideration period. Only parties of record (i.e., the applicant, any person who testified at the open record hearing on the application, any person who individually submitted written comments on the application, or the City of Edmonds) may file a request for reconsideration. The grounds for reconsideration are limited to errors of procedure, errors of law or fact, errors of judgment, or the discovery of new evidence that was not known and could not in the exercise of reasonable diligence have been discovered. Reconsideration requests must contain the information specified in ECDC 20.06.010(D) and be accompanied by the required filing fee.

APPEALS

Pursuant to ECDC 20.01.002, appeals of a decision of the Hearing Examiner on a shoreline substantial development permit application are to City Council in accordance with the procedures set forth in ECDC 20.07. Only parties of record have standing to file an appeal. Appeals must be filed within 14 days of decision issuance. Filing a request for reconsideration is not a prerequisite to filing an appeal.

EFFECT OF REQUEST FOR RECONSIDERATION ON APPEAL DEADLINE

The timely filing of a request for reconsideration stays the Hearing Examiner's decision until such time that the Hearing Examiner issues a decision on reconsideration. After the reconsideration decision has been issued, the time period for appeal shall recommence and be the same for all parties of record, regardless of whether a party filed a motion for reconsideration.

NOTICE TO COUNTY ASSESSOR

The property owner may, as a result of the decision rendered by the Hearing Examiner, request a change in the valuation of the property by the Snohomish County Assessors Office.